



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0307; FRL-9587-02-R3]

Air Plan Approval; Pennsylvania; Allegheny County Area Fine Particulate Matter Clean Data Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a determination that the Allegheny County, Pennsylvania nonattainment area has clean data for the 2012 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). This clean data determination (CDD) is based upon quality-assured, quality-controlled, and certified ambient air monitoring data showing the area has attained the 2012 annual PM_{2.5} NAAQS based on the 2018-2020 data available in EPA's Air Quality System (AQS) database. Based on this clean data determination, pursuant to EPA's Clean Data Policy, the obligation for Pennsylvania to make submissions to meet certain Clean Air Act (CAA or the Act) attainment plan requirements for the 2012 annual PM_{2.5} NAAQS for the Allegheny County area is suspended for as long as the area continues to attain the 2012 annual PM_{2.5} NAAQS. Following this final action, Pennsylvania's remaining obligation to submit contingency measures in response to EPA's May 14, 2021 conditional approval of Allegheny County's PM_{2.5} attainment plan is suspended. Additionally, the federal implementation plan (FIP) clock, which was triggered by EPA's March 26, 2018 Finding of Failure to Submit an attainment plan for the 2012 PM_{2.5} NAAQS for the Allegheny County Nonattainment Area, is suspended for the remaining contingency measures element conditionally approved as part of EPA's May 14, 2021 action on the Allegheny County PM_{2.5} attainment plan.

DATES: This final action is effective on **[insert date 30 days after date of publication in the**

Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0307. All documents in the docket are available for inspection at the Regulations.gov website, at <https://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **For Further Information Contact** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2176. Mr. Rehn can also be reached via electronic mail at rehn.brian@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, it is intended to refer to the EPA.

Table of Contents

- I. Background
- II. Response to Public Comments
- III. Final Action
- IV. Statutory and Executive Orders Review

I. Background

On December 14, 2012, the EPA revised the level of the primary annual PM_{2.5} standard, lowering the level from 15.0 micrograms per cubic meter (µg/m³) to 12.0 µg/m³. Effective April

15, 2015, EPA issued area designations for the 2012 annual PM_{2.5} NAAQS.¹ In that action, EPA designated the Allegheny County, Pennsylvania area (Allegheny County Area) as a moderate nonattainment area for the 2012 annual PM_{2.5} NAAQS.²

On April 6, 2018, EPA published a “finding of failure to submit” under section 110(k) of the CAA, finding that several areas nationwide (including the Allegheny County Area) failed to submit required SIP elements for the 2012 annual PM_{2.5} NAAQS.³ At that time, Pennsylvania had failed to submit the following specific moderate area SIP elements for the Allegheny County Area: an attainment demonstration; control strategies analysis, including reasonably available control measures (RACM) and reasonably available control technology (RACT); a reasonable further progress (RFP) plan; quantitative milestones; emission inventories, and contingency measures. That finding of failure to submit triggered the sanctions clock under section 179 of the CAA, as well as an obligation under section 110(c) of the CAA for EPA to promulgate a FIP no later than two years from the effective date of the finding, if Pennsylvania had not submitted, and EPA did not approve, the required SIP submission.

Pennsylvania submitted the required Allegheny County Area PM_{2.5} nonattainment plan (or the Allegheny County PM_{2.5} Plan, or simply the Allegheny County Plan) on September 30, 2019. On November 1, 2019, EPA determined the submitted PM_{2.5} Plan to be technically and administratively complete (in accordance with SIP completeness criteria of CAA section 110(k) and 40 CFR part 51, appendix V), correcting the finding of failure to submit deficiency with respect to the missing nonattainment area planning requirements for the Area under the 2012 PM_{2.5} NAAQS and stopping the sanctions clock (but not the FIP clock) triggered by EPA’s April 6, 2018 finding. On May 14, 2021 (86 FR 26388), EPA approved elements of the Allegheny County Area PM_{2.5} Plan, except the required contingency measures element of the plan, which EPA conditionally approved. That final PM_{2.5} Plan approval action terminated EPA’s FIP

¹ See 80 FR 2206, January 15, 2015.

² See 40 CFR 81.339.

³ See 83 FR 14759, April 6, 2018.

obligation for all CAA required nonattainment plan elements except for the contingency measures element. As to the contingency measures element of the Allegheny County Area PM_{2.5} Plan, EPA's May 14, 2021 conditional approval of the plan's contingency measures element suspended EPA's FIP obligation for the duration of the conditional approval of that element. If Pennsylvania timely submits a SIP revision containing approvable contingency measures by May 14, 2022, upon EPA's subsequent approval of that SIP revision, EPA's FIP obligation with respect to the contingency measures element of the Allegheny County Area PM_{2.5} Plan will be terminated.

On September 3, 2021 (86 FR 49497), EPA proposed to determine that the Allegheny County Area is attaining the 2012 PM_{2.5} annual NAAQS under the Clean Data Policy,⁴ based on the most recent three years (2018-2020) of valid monitoring data. EPA proposed that, if finalized, the clean data determination would suspend Pennsylvania's obligation to submit the outstanding contingency measure element of the attainment plan for the PM_{2.5} NAAQS for as long as the area continues to attain the 2012 annual PM_{2.5} NAAQS. Additional details can be found in EPA's September 3, 2021 proposed action.⁵ Finally, the September 3, 2021 action proposed to suspend the FIP clock triggered by the March 26, 2018, Finding of Failure to Submit action that were not halted by subsequent submittal and EPA approval of most elements of the attainment plan.⁶

II. Response to Public Comments

EPA's September 3, 2021 proposed clean data determination action for the Allegheny County nonattainment area for the PM_{2.5} NAAQS opened a thirty-day public comment period, which closed on October 4, 2021. EPA received comments from three individual commenters. All comments received have been placed in the docket for this action. A summary of the relevant comments received and EPA's responses thereto are listed below.

⁴ 40 CFR 51.1015(a).

⁵ See 86 FR 49497.

⁶ See 86 FR 26388, May 14, 2021.

Comment 1: The commenter stated that while they generally support the proposed clean data determination action, they disagree with the suspension of certain PM_{2.5} plan requirements related to attainment - namely the attainment demonstration, RACM and RACT demonstrations, emission control strategies, RFP plan, quantitative milestones, and contingency measures. Given the lateness of Pennsylvania's submission of the required attainment plan in 2018, the commenter contends that Pennsylvania should adopt these requirements.

Response 1: Under EPA's longstanding Clean Data Policy interpretation as codified for PM_{2.5} at 40 CFR 51.1015, a determination that a PM_{2.5} nonattainment area has attained the NAAQS suspends the state's obligation to submit to EPA those SIP nonattainment planning elements related to attaining that NAAQS for as long as the area continues to attain the standard. Because the purpose of certain nonattainment plan elements is to help bring a violating area into attainment, if data shows that the area has attained, EPA interprets that these requirements should no longer be applicable. For more than two decades, and for many NAAQS, EPA has consistently applied its Clean Data Policy interpretation to attainment-related provisions of subparts 1, 2 and 4 of part D, title I of the CAA. The Clean Data Policy is the subject of several EPA memoranda and regulations and numerous individual rulemakings published in the **Federal Register**. These rulemakings have applied the interpretation to a broad spectrum of ozone, fine particulate matter, lead, and carbon monoxide NAAQS – including the 1997 and 2006 PM_{2.5} NAAQS. The Clean Data Policy has been reviewed and upheld by Federal courts on a number of occasions.⁷ The 2016 PM_{2.5} SIP Requirements Rule's Clean Data Policy interpretation with respect to CAA subpart 4 aligns with that implemented under prior fine particulate matter NAAQS.⁸ EPA has previously articulated its Clean Data Policy interpretation under CAA

⁷ The D.C. Circuit has upheld the Clean Data Policy interpretation as embodied in the EPA's 8-hour ozone Implementation Rule at 40 CFR 51.918. *NRDC v. EPA*, 571 F. 3d 1245 (D.C. Cir. 2009). Other U.S. Circuit Courts of Appeals that have considered and reviewed the EPA's Clean Data Policy interpretation have upheld it and the rulemakings applying the EPA's interpretation. *Sierra Club v. EPA*, 99 F.3d 1551 (10th Cir. 1996); *Sierra Club v. EPA*, 375 F. 3d 537 (7th Cir. 2004); *Our Children's Earth Foundation v. EPA*, N. 04-73032 (9th Cir. June 28, 2005) (memorandum opinion); *Latino Issues Forum, v. EPA*, Nos. 06-75831 and 08-71238 (9th Cir. March 2, 2009) (memorandum opinion).

⁸ See 81 FR 58010 (August 24, 2016) and 40 CFR 51.1015.

subpart 4 in implementing the PM₁₀ standard.⁹

As described in the proposed action, the clean data determination does not suspend other CAA nonattainment plan requirements, such as an emissions inventory, nonattainment new source review requirements, and certain emission reduction requirements, that are considered independent of attainment. In any case, EPA's May 14, 2021, approval of Allegheny County's Plan for the 2012 Annual PM_{2.5} NAAQS fully approved all required moderate area nonattainment plan elements—including nearly all elements referenced by the commenter -- except for the contingency plan, which was conditionally approved.¹⁰ Therefore, those SIP-approved plan elements for the 2012 PM_{2.5} NAAQS are in place and in effect, regardless of the subsequent suspension of the obligation to submit them pursuant to this clean data determination. In the case of the contingency measures element of the PM_{2.5} plan, which EPA conditionally approved, the clean data determination suspends the requirement to submit a SIP revision addressing that element as long as the area continues to attain the 2012 Annual PM_{2.5} NAAQS.¹¹ Under the Clean Data Policy and the regulations adopted to address PM_{2.5}, suspended plan elements would be permanently discharged if the area is redesignated to attainment.¹²

Comment 2: The commenter contends that because many states failed to submit required SIP nonattainment plan elements to EPA in a timely manner, it is important that EPA establish a FIP under the authority of the CAA as a supplement to the SIP, and to step in to meet nonattainment planning requirement commitments on behalf of the states, if need be, and that the process for doing so be transparent to the public.

⁹ See, e.g., 75 FR 27944 (May 19, 2010) (determination of attainment of the PM₁₀ standard in Coso Junction, California); 71 FR 13021 (March 14, 2006) (Yuma, Arizona area); 71 FR 40023 (July 14, 2006) (Weirton, West Virginia area); 71 FR 44920 (August 8, 2006) (Rillito, Arizona area); 71 FR 63642 (October 30, 2006) (San Joaquin Valley, California area) 72 FR 14422 (March 28, 2007) (Miami, Arizona area). In the EPA's proposed and final rulemakings determining that the San Joaquin Valley nonattainment area attained the PM₁₀ standard, the EPA set forth at length its rationale for applying the Clean Data Policy to PM₁₀ under subpart 4. 71 FR at 63643–45. The Ninth Circuit upheld the EPA's final rule, and specifically the EPA's Clean Data Policy, in the context of subpart 4. *Latino Issues Forum v. EPA*, supra. Nos. 06–75831 and 08–71238 (9th Cir. March 2, 2009) (memorandum opinion).

¹⁰ See 86 FR 26388 (May 14, 2021).

¹¹ *Ibid.*

¹² See 40 CFR 51.1015(a).

Response 2: As discussed in the prior response, Pennsylvania did submit a moderate PM_{2.5} attainment plan, and EPA approved all the elements of that plan except for the contingency measures, which were conditionally approved. Full approval also means that these elements of the plan are in the SIP and federally enforceable. The purpose of a CAA section 110(c)(1) FIP is to provide a backstop where a state has failed to make a required submission or where EPA has disapproved a state's plan or found such plan to be deficient; in this case, where EPA has fully approved the state's plan, a FIP is not provided for under the CAA.

Regarding the contingency measures element, EPA's conditional approval requires the state to submit a SIP to remedy the conditional approval of the contingency measure plan element no later than May 14, 2022.¹³ EPA's approval of the SIP revision addressing contingency measures would terminate the FIP clock for that outstanding plan element. However, upon the effective date of this Clean Data Determination, the requirement to submit the contingency measures element of the attainment SIP and EPA's FIP requirement for that element are suspended as long as the Allegheny County Area continues to attain the 2012 Annual PM_{2.5} NAAQS.¹⁴

III. Final Action

EPA is finalizing this Clean Data Determination, under the Clean Data Policy, as proposed. Pursuant to 40 CFR 51.1015, EPA has determined that based on 3-years of certified, complete, and valid ambient air monitoring data between 2018 and 2020, the Allegheny County Area has attained the 2012 annual PM_{2.5} NAAQS. Therefore, Pennsylvania's obligation to submit the attainment plan elements referenced in 40 CFR 51.1015(a)—including the conditionally approved contingency measures element of the attainment plan—are suspended as long as the area continues to attain the 2012 annual PM_{2.5} NAAQS. For the Allegheny Area, EPA has already approved into the SIP the attainment demonstration, projected emissions

¹³ See 40 CFR 52.2023(n).

¹⁴ See 86 FR 26388 (May 14, 2021).

inventories, RACM (including RACT), RFP plans, motor vehicle emissions budgets, and quantitative milestones for the Allegheny Area. The requirement to submit the conditionally approved contingency measures element is suspended until such time as: (1) EPA determines that the area has violated the 2012 Annual PM_{2.5} NAAQS; (2) the area is redesignated to attainment, after which such requirements are permanently discharged; or (3) EPA determines that the area attained by its attainment date of December 31, 2021.¹⁵

Although the plan submittal obligation has been suspended, this clean data determination action does not preclude Pennsylvania from submitting, nor the EPA from acting upon, the suspended attainment plan element. As a result of this final action, the FIP clock triggered by the EPA's March 26, 2018, Finding of Failure to Submit are suspended.¹⁶

This final action does not constitute a redesignation of the Allegheny County nonattainment area to attainment for the 2012 annual PM_{2.5} NAAQS under CAA section 107(d)(3) because Pennsylvania has not yet submitted a request for redesignation or a maintenance plan for the Area and EPA has not approved a maintenance plan for the Allegheny County Area meeting the requirements of section 175A of the CAA, nor has EPA determined that the Area has met the other CAA requirements for redesignation. The classification and designation status in 40 CFR part 81 remains Moderate nonattainment for this area until such time as the EPA determines that Pennsylvania has met the CAA requirements for redesignation to attainment for the Allegheny County PM_{2.5} Area.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action finalizes a clean data determination based on attainment of air quality and suspends certain Federal nonattainment planning requirements. This action imposes no new

¹⁵ See *Bahr v. Regan*, 6 F.4th 1059, 1083 (9th Cir. 2021).

¹⁶ See 83 FR 14759.

Federal requirements and imposes no additional requirements beyond those imposed by state law. For this reason, this final action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because this action imposes no new requirements to apply in Indian country located in the State, and EPA notes that this action will not impose direct

costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action.

This action to determine attainment, under the Clean Data Policy, of Allegheny County nonattainment area for the 2012 Annual PM_{2.5} NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Diana Esher,
Acting Regional Administrator,
Region III.

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